

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**SERGIO ALVARADO
AND GLORIA ALVARADO,
Plaintiffs,**

vs.

**STATE FARM LLOYDS,
Defendant.**

§
§
§
§
§
§
§
§

CASE NO. 1:16-cv-183

DEFENDANTS STATE FARM LLOYDS' NOTICE OF REMOVAL

Defendant State Farm Lloyds ("State Farm") files this Notice of Removal.

PROCEDURAL BACKGROUND

1. Plaintiffs Sergio Alvarado and Gloria Alvarado filed this action on May 31, 2016 against State Farm in the 103rd Judicial District Court of Cameron County, Texas. That case was docketed under cause number 2016-DCL-03628 (the "State Court Action").
2. State Farm was served with process on June 23, 2016.
3. On July 14, 2016, State Farm filed its Original Answer to Plaintiffs' Original Petition in the State Court Action.
4. State Farm timely files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 103rd Judicial District Court of Cameron County, Texas to the United States District Court for the Southern District of Texas, Brownsville Division.

NATURE OF THE SUIT

5. The State Court Action which has been filed by Plaintiffs Sergio Alvarado and Gloria Alvarado involves a dispute over the alleged non-payment of insurance benefits and the handling

of Plaintiffs' claims for damages allegedly caused by a wind and hailstorm on May 28, 2014. *See Plaintiffs' Original Petition* at p. 3. Plaintiff asserts causes of action against Defendants including breach of contract, violations of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), violations of Chapters 541 and 542 of the Texas Insurance Code, and breach of duty of good faith and fair dealing. *Id.* at pp. 5-11.

BASIS FOR REMOVAL

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest (Plaintiffs and State Farm) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. At the time the State Court Action was commenced, Plaintiffs were and still are residents and citizens of Texas residing in Cameron County.

8. Defendant State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyd's Plan" organized under chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois, thereby making State Farm Lloyds a citizen of Illinois for diversity purposes. *See Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

9. Plaintiffs' Original Petition contains a conclusory statement that "[p]laintiffs seek monetary relief of \$75,000 or less." However, in their Original Petition, Plaintiffs seek damages including (but not limited to) actual damages, consequential damages, treble damages under the DTPA, statutory damages under the Insurance Code, pre-judgment and post-judgment interest, and attorney's fees. In addition, prior to filing suit, Plaintiffs sent State Farm a demand letter and

estimate, a copy of which is attached hereto as Exhibit 1 and incorporated by reference. The demand letter included an estimate of Plaintiffs' alleged damages under the policy, which Plaintiffs allege to be \$29,671.26, mental anguish damages of \$1,483.56, and attorney's fees through June 1, 2015 of \$9,791.52, for a total demand of \$40,946.34. Plaintiffs' demand also states "State Farm's actions constitute 'knowing' violations of the DTPA and the Texas Insurance Code sufficient to allow the imposition of treble damages up to 3 times economic damages." As shown by Plaintiffs' demand and Petition, the amount in controversy requirement is satisfied.

REMOVAL IS PROCEDURALLY CORRECT

10. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6 because State Farm was served with process on June 23, 2016 and filed an answer on July 14, 2016.

11. Venue is proper in this Division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

12. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendants in the State Court Action are attached herein to the Index of Matters Filed (Exhibit 2).

13. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of Defendants' Original Notice of Removal was promptly given to all parties and to the clerk of the 103rd Judicial District Court of Cameron County, Texas.

14. All documents required by Local Rule 81 to be filed with this Notice of Removal are attached herein to the Index of Matters Filed (Exhibit 2 and 2A-2D).

PRAYER

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm Lloyds also requests any additional relief to which it may be justly entitled.

Respectfully submitted,

/s/ Sarah Nicolas

Sarah Nicolas

TSBN 24013543/SDOT 32122

ATLAS, HALL & RODRIGUEZ, LLP

11940 Jollyville Rd., Suite 125-S

Austin, Texas 78759

512-583-0579 – Phone

512-291-3909 – Fax

snicolas@atlashall.com - Email

ATTORNEY IN CHARGE FOR DEFENDANT

Of Counsel:

Dan K. Worthington

TSBN 00785282 / SDOTBN 15353

Sofia A. Ramon

TSBN 00784811/SDOT 20871

ATLAS, HALL & RODRIGUEZ, LLP

818 W. Pecan Blvd. (78501)

P.O. Box 3275

McAllen, Texas 78502

(956) 682-5501 – Phone

(956) 686-6109 – Fax

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of this document was served on all counsel of record on the 21st day of July, 2016, as indicated below:

R. Kent Livesay
LAW OFFICES OF R. KENT LIVESAY, P.C.
2510 S. Veterans Blvd.
Edinburg, Texas 78539
(956) 686-5776 – Phone
(956) 686-0050 – Fax
litigation@livesaylawfirm.com

Attorneys for Plaintiff

/s/ Sarah Nicolas

Sarah Nicolas